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to residential purposes, though there was no express prohibition against the erection of buildings for other purposes.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 754.]

Appeal from Circuit Court, Norfolk County.

Suit by W. B. Burgess and others against E. M. Whitehurst to enjoin the building of a store building on certain lots. Decree for complainants, and defendant appeals. Affirmed.

Pender, Way & Foreman, of Norfolk, for appellant.

E. R. F. Wells and *Wm. T. Higgins*, both of Norfolk, for appellees.

OLDAKER *v.* VIRGINIA RY. & POWER CO.

OLDAKER *v.* SAME.

June 16, 1921.

[107 S. E. 634.]

Railroads (§ 350 (33)*)—Evidence Held to Make Motorman's Negligence under Last Clear Chance Rule a Question of Fact.—In an action for damages resulting from a collision between an interurban car and four mules being driven by a boy, evidence that when the boy started to cross the double track of defendant's railroad line a car was approaching from each direction at substantially equal distance, and that one motorman stopped his car before reaching the crossing, held to show that the motorman of the other car had the last clear chance to avoid the accident after he could have discovered plaintiff's peril, but that he failed to sound warning or to stop or even check the speed of his car, and hence the court erred in sustaining defendant's demurrer.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 574.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Norfolk County.

Separate actions of trespass on the case by A. L. Oldaker, an infant, and by A. A. Oldaker against the Virginia Railway & Power Company, tried together by consent of parties. There were judgments for the defendant in each case, when the trial court sustained the demurrer to the evidence after verdicts for plaintiffs, and the plaintiffs bring error. Reversed, and final judgment rendered for plaintiffs.

S. M. Brandt, of Norfolk, for plaintiffs in error.

Williams, Loyall & Tunstall, of Norfolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.